

REMARKS

Claims 39-56 are pending in the present application. Reconsideration of the present application is respectfully requested in view of the arguments set forth herein.

In the Office Action, claims 39-56 were rejected under 35 U.S.C. § 103 as allegedly being unpatentable over Besser '368 (WO 03/007368). Applicants respectfully traverse the Examiner's rejections.

The present U.S. patent application (Serial No. 10/717,122) was filed on November 19, 2003. Applicants claimed priority based on a corresponding German application (Serial No. 103 03 925.2) filed on January 31, 2003.

It is believed that the Examiner's primary reference, Besser '368 (WO 03/007368), is prior art only under § 102(a) to the present application since it published on January 23, 2003.

The corresponding U.S. patent to Besser '128 (U.S. Patent No. 6,429,128) was filed on July 17, 2001 and issued on August 6, 2002. Thus, the U.S. patent – Besser '128 – is only prior art to the present application under Sections 102(a) and 102(e). Besser '128 is not prior art under § 102(b) due to the claim made to the earlier filed German application – which was filed on January 31, 2003.

The attached declarations establish that neither Besser '368 nor Besser '128 are prior art to the present application under 35 U.S.C. § 102(a). More specifically, the attached declarations and supporting documentation establish that, prior to the publication of either of the Besser documents (Besser '368 – publication date of January 31, 2003; Besser '128 – issue date of August 6, 2002), the subject matter in the pending application (Serial No. 10/717,122) had

already been conceived of by the named inventors. See Declaration of the Inventor Hartmut Ruelke. Thus, neither Besser '368 nor Besser '128 qualify as prior art under 35 U.S.C. § 102(a).

In view of the foregoing, Besser '128 – the issued U.S. patent – is only prior art to the present application under 35 U.S.C. § 102(e). However, according to MPEP § 706.02(I)(1), “effective November 29, 1999, subject matter which was prior art under former 35 U.S.C. 103 via 35 U.S.C. 102(e) is now disqualified as prior art against the claimed invention if that subject matter the claimed invention ‘were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.’” The present application was filed on or after November 29, 1999. Furthermore, the present application and Besser '128 were, at the time the present invention was made, owned by the same entity or subject to an obligation of assignment to the same entity, namely Advanced Micro Devices. Thus, Applicants respectfully submit that Besser '128 is not available as prior art in any obviousness determination.

Accordingly, (1) Besser '368, as applied by the Examiner, is not prior art to the present application under 35 U.S.C. § 102(a); (2) Besser '128 (the corresponding U.S. patent to Besser '368) is not prior art to the present application under 35 U.S.C. § 102(a); and (3) Besser '128 is not prior art to the present application under § 103, because it is only prior art to the present application under 35 U.S.C. § 102(e), and the other requirements of § 103 are met.

For at least the aforementioned reasons, it is respectfully submitted that all pending claims are in condition for immediate allowance. The Examiner is invited to contact the undersigned attorney at (713) 934-4055 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

WILLIAMS, MORGAN & AMERSON
CUSTOMER NO. 23720

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/J. Mike Amerson/

J. Mike Amerson
Reg. No. 35,426
10333 Richmond, Suite 1100
Houston, Texas 77042
(713) 934-4055
(713) 934-7011 (facsimile)

ATTORNEY FOR APPLICANTS